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## EVIDENTIARY CONSTRAINTS IN PROVING CRIME THROUGH *FACTUM PROBANDUM* AND *FACTUM PROBANS*

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Akashitara Nath, UILS, Chandigarh University, Punjab

Dr. Ravinderjeet Kaur, UILS, Chandigarh University, Punjab.

### ABSTRACT

The accurate establishment of the factual occurrence of a crime, anchored in the evidentiary relationship between *factum probandum* (the fact to be proved) and *factum probans* (the evidence proving it), remains one of the most complex challenges in contemporary criminal adjudication. This research critically examines how courts navigate the evidentiary burdens required to demonstrate that a crime has indeed occurred, especially when direct evidence is weak, absent, or contested. Drawing from classical common-law doctrine, modern statutory frameworks, and evolving judicial interpretations, the study explores the jurisprudential foundations that shape the interplay between these two evidentiary components. It further analyses how investigative constraints, forensic limitations, and procedural gaps complicate the transformation of *factum probans* into a legally sufficient *factum probandum*.

The article employs a doctrinal methodology supplemented by case-based analysis to evaluate how Indian courts, particularly under emerging legal reforms, respond to evidentiary uncertainties in serious offences. It interrogates inconsistencies in judicial reasoning, the risks of wrongful convictions or acquittals, and the normative debate on whether existing evidentiary thresholds adequately safeguard fairness and accuracy in criminal trials. Comparative references to other common-law jurisdictions illuminate alternative evidentiary standards and their potential relevance to Indian doctrine.

Ultimately, the study argues for a calibrated evidentiary framework that clarifies the boundaries between inferential reasoning and factual proof, strengthens the admissibility and reliability of supporting evidence, and enhances judicial consistency in assessing whether the alleged crime has been sufficiently established. This re-evaluation is crucial for ensuring that criminal adjudication remains both just and epistemically sound.

**Keywords:** Factum probandum, Factum probans, Proof of Crime, Standard of proof, Circumstantial evidence, Digital evidence

## 1. Introduction

The process of proving a criminal offence rests fundamentally on the ability of the prosecution to demonstrate both what happened and how it happened. In classical evidentiary theory, this distinction is captured through the concepts of *factum probandum*, the principal fact to be proved, such as the occurrence of a crime, and *factum probans*, the subordinate facts or evidentiary materials that serve as the means of proving that principal fact. Although these terms appear deceptively straightforward, they hold profound doctrinal and practical significance in shaping the architecture of criminal adjudication. Their interplay forms the foundation of evidentiary reasoning, dictating the scope of investigation, the admissibility of evidence, and the standards applied by courts in determining guilt.

In modern criminal justice systems, establishing the factual occurrence of a crime has become increasingly complex. Traditional forms of direct evidence, eyewitness testimony, physical traces, or confessions, have been supplemented and sometimes replaced by digital footprints, algorithmic inferences, forensic reconstructions, and circumstantial chains. The transformation of crime modalities and investigative practices has intensified the need to revisit how *factum probandum* and *factum probans* are conceptualized within evidentiary doctrine. Their classical definitions, rooted in common-law traditions and early jurisprudential writings, encounter new challenges when confronted with encrypted communication, metadata, electronic records, and scientific evidence whose reliability and probative value require specialised scrutiny.

In India, alongside other common-law jurisdictions, courts continually negotiate the boundaries between ultimate facts and evidentiary facts, especially when the factual occurrence itself is contested or partially indeterminable. This tension becomes visible in cases relying heavily on circumstantial evidence, cases with missing or destroyed physical evidence, and cases where digital or forensic evidence forms the core of the prosecution narrative. Judicial reasoning in such contexts reveals deeper concerns about the burden of proof, evidentiary thresholds, and the risk of wrongful conviction.

Against this background, this research article examines the evolving evidentiary challenges in establishing the factual occurrence of crime through the lens of *factum probandum* and *factum probans*. By tracing their historical development, doctrinal relevance, judicial interpretation, and contemporary challenges, the study aims to articulate both the theoretical and practical gaps in the current proof mechanisms. It further offers reform-oriented recommendations to

strengthen evidentiary reliability and safeguard procedural fairness in modern criminal trials.

## 2. Historical Evolution of Factum Probandum and Factum Probans

The distinction between *factum probandum*, the ultimate fact to be proved, and *factum probans*, the evidentiary facts used to prove that ultimate fact, represents one of the most enduring conceptual pillars of evidence law. Though Latin in origin, the dichotomy embodies ideas that pre-date classical Roman jurisprudence and evolved across English common law, continental thought, and later colonial and post-colonial Indian evidence doctrine. The modern relevance of these concepts emerges from the fundamental need to separate what must be legally established (*factum probandum*) from the material that assists in establishing it (*factum probans*), especially in criminal adjudication where burdens and standards of proof are stringent.

### 2.1 Roman and Early Continental Foundations

In Roman law, early evidentiary practice revolved around two essential distinctions: the *res* (the thing or principal matter) and the *argumenta* (the supporting reasons or indications). This philosophical separation ultimately shaped the later Latin expressions *factum probandum* and *factum probans*. Classical jurists such as Ulpian and Paulus emphasised the differentiation between the principal fact in issue and the indicative evidentiary facts, laying a conceptual foundation that medieval canonists later expanded.<sup>1</sup>

Civilian jurists of the medieval and early modern periods formalised hierarchical evidentiary systems through “degrees of proof,” directly influencing the development of European doctrines on evidentiary relevance and probative value. These civil-law developments indirectly informed common-law evolution through scholastic influence and early legal humanism.

### 2.2 Growth in English Common Law

The English common-law system gradually developed a more structured evidentiary framework between the seventeenth and nineteenth centuries. Although the terms *factum probandum* and *factum probans* were occasionally used in classical treatises, the conceptual

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<sup>1</sup> Max Radin, *Roman Legal Theory and Its Influence* 87 (University of Pennsylvania Press, 1929).

distinction was strongly embedded even without explicit terminology.

Sir William Blackstone and later Jeremy Bentham clarified the functional separation between facts in issue and facts relevant as evidence. Blackstone's Commentaries affirmed the need for evidentiary facts that logically support the ultimate fact in issue, while Bentham's exhaustive writings on evidence further defined the relationship between evidentiary chains and the "fact to be proved."<sup>2</sup>

This doctrinal distinction matured significantly in cases such as *R v Onufrejczyk*<sup>3</sup>, where the House of Lords upheld that the ultimate fact of death (*factum probandum*) could be inferred from circumstantial facts (*facta probantia*) such as disappearance, bloodstains, behaviour, and forensic clues.

### 2.3 Colonial Reception and Early Indian Application

During British rule, Indian courts adopted common-law evidentiary concepts through the Indian Evidence Act, 1872<sup>4</sup>, drafted primarily by Sir James Fitzjames Stephen. Stephen's statutory classification of "facts in issue" and "relevant facts" in Sections 3 and 5 directly reflected the *factum probandum-factum probans* dichotomy. His own writings explicitly drew from Benthamite evidentiary theory, further grounding the Indian statutory scheme in common-law principles.<sup>5</sup>

Early Indian judgments used the framework implicitly, even when the Latin terms were not invoked. For example, in *Emperor v Manu Chikkappa*<sup>6</sup>, the Bombay High Court distinguished between the principal fact of guilt under consideration and the circumstantial evidence relied upon to establish the same, an operational use of the dichotomy.

### 2.4 Post-Independence Refinement in Indian Jurisprudence

After 1947, Indian courts expanded and refined the conceptual distinction in complex criminal cases, particularly those involving circumstantial evidence and inferential reasoning.

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<sup>2</sup> Jeremy Bentham, *Rationale of Judicial Evidence* 56 (Hunt & Clarke, 1827).

<sup>3</sup> 1955 1 QB 388.

<sup>4</sup> Indian Evidence Act, 1872 (Act 1 of 1872; repealed 2023)

<sup>5</sup> James Fitzjames Stephen, *The Indian Evidence Act: With an Introduction on the Principles of Judicial Evidence* 12-15 (Spink Thacker & Co., 1872).

<sup>6</sup> 1900 ILR 25 Bom 626.

In *Hanumant Govind Nargundkar v State of Madhya Pradesh*<sup>7</sup>, the Supreme Court underscored the importance of a complete and unbroken chain of *facta probantia* before the *factum probandum* of guilt could be judicially inferred. Similarly, in *Sharad Birdhichand Sarda v State of Maharashtra*<sup>8</sup>, the Court articulated the five “golden principles” for circumstantial evidence, effectively elaborating the evidentiary relationship between supporting facts and the ultimate fact in issue.

These decisions demonstrate a clear conceptual continuity with classical theory: the court must first determine what the prosecution must prove (*factum probandum*) and thereafter evaluate whether the evidentiary material (*factum probans*) satisfies the legal standard.

## 2.5 Contemporary Judicial and Academic Developments

Modern scholarship in India and abroad continues to emphasise the evidentiary hierarchy between material facts and evidentiary facts. Authors such as Andrew Choo, Adrian Keane, and Indian scholars like Vepa P. Sarathi and Ratanlal & Dhirajlal have highlighted the practical significance of these concepts in organising evidence, structuring judicial reasoning, and maintaining clarity in burdens of proof.

Recent Indian case law, including *State of Rajasthan v Kashi Ram*<sup>9</sup>, reiterates the necessity of ensuring that evidentiary facts are both credible and cumulatively sufficient to establish the primary fact in issue, especially when the prosecution relies entirely on circumstantial evidence.

## 3. Doctrinal Significance in Substantive and Procedural Criminal Law

### 3.1. Understanding the Doctrinal Position

The twin concepts of *factum probandum* (the principal fact to be proved) and *factum probans* (the evidentiary fact used to prove it) occupy a foundational position within criminal adjudication. Their doctrinal significance lies in clarifying not only what must be proved in a criminal case, but also how such proof can be legitimately established within the evidentiary and procedural framework. This distinction is indispensable in the architecture of the criminal

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<sup>7</sup> AIR 1952 SC 343.

<sup>8</sup> AIR 1984 SC 1622.

<sup>9</sup> 2006 12 SCC 254.

justice system because it separates the ultimate issue of guilt from the elements of proof relied upon to reach that conclusion. In contemporary criminal litigation, where digital, forensic, and circumstantial evidence increasingly dominate, the classical divide between these two concepts continues to guide judicial reasoning and fact-finding.

### **3.2. Doctrinal Foundations: Linking Substantive and Procedural Law**

The substantive criminal law defines offences and prescribes punishments, thereby articulating the *factum probandum*, i.e., the essential ingredients that the prosecution must establish. Procedural and evidentiary law determine the admissibility, relevance, and weight of the *factum probans*, ensuring that the process of proof meets constitutional and statutory safeguards such as fairness and due process.

Scholars have emphasized that without this conceptual clarity, criminal adjudication risks conflating probative material with the ultimate fact in issue, an error that may lead to wrongful convictions or acquittals<sup>10</sup>. The distinction thus serves as an analytical device enabling courts to assess whether the prosecution's narrative meets the legal threshold of proof.

### **3.3. Significance in Substantive Criminal Law**

#### **3.3.1. Identifying the Elements of Offences**

Substantive criminal law structures the *factum probandum* by defining the essential ingredients of offences, such as *actus reus*, *mens rea*, causation, and harm. Each of these must be established independently and cumulatively.

For instance, under Indian criminal law, offences like culpable homicide require proof of

- (a) the death of a person,
- (b) the causative link with the accused's act, and
- (c) requisite mental state.

The prosecution's burden relates to these ultimate facts; the evidence relied upon—eyewitness

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<sup>10</sup> Ratanlal & Dhirajlal, *The Law of Evidence*, 112 (LexisNexis, 2019).

testimony, medical opinion, forensic traces, constitutes the *factum probans*.

### 3.3.2. Case Law Illustration

In *Virsa Singh v State of Punjab*<sup>11</sup>, the Supreme Court distinguished between facts constituting the offence and evidentiary facts used to infer intention and knowledge. The Court stressed that the prosecution must prove the objective fact of the injury (*factum probandum*), while intention could be inferred from circumstances (*factum probans*). This case remains a leading exposition of the doctrinal separation in substantive criminal liability.

## 3.4. Significance in Procedural and Evidentiary Law

### 3.4.1. The Structure of “Fact in Issue” and “Relevant Fact”

Evidence law, particularly the Bharatiya Sakshya Adhiniyam, 2023, operates on the classical distinction between “facts in issue” (*factum probandum*) and “relevant facts” (*factum probans*). This statutory classification mirrors the *factum probandum/probens* divide and regulates:

- what evidence may be admitted,
- how it must be evaluated, and
- the extent to which it proves the principal fact.

Scholars argue that this doctrinal clarity is essential to prevent overreliance on weak inferences that do not sufficiently support the fact in issue.<sup>12</sup>

### 3.4.2. Case Law Illustration

In *State of Maharashtra v Damu*<sup>13</sup>, the Supreme Court reaffirmed that circumstantial evidence can constitute robust *factum probans* only when the chain forms a complete and unbroken link to the *factum probandum*, the guilt of the accused. The Court warned against speculative inference, reinforcing that evidentiary facts must possess clear probative value.

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<sup>11</sup> AIR 1958 SC 465.

<sup>12</sup> Woodroffe & Amir Ali, Vol. I *Law of Evidence* 68 (Delhi Law House, 2017).

<sup>13</sup> 2000 6 SCC 269.

Similarly, *Sharad Birdhichand Sarda v State of Maharashtra*<sup>14</sup> emphasized the “five golden principles” of circumstantial evidence, tightly linking the evidentiary facts with the ultimate fact to be proved.

### 3.5. Constitutional Dimensions

The doctrinal divide also interacts significantly with constitutional principles, particularly Article 20(3) and Article 21. The Supreme Court in *Selvi v State of Karnataka*<sup>15</sup> held that involuntary scientific tests cannot form legitimate *factum probans* because they violate constitutional protections. This judgment illustrates that procedural fairness constrains not only what facts must be proved but also which means may be used to prove them.

Contemporary scholars highlight the increasing complexity of distinguishing *probandum* and *probans* in the context of digital evidence. As data-based evidentiary trails become more layered, courts face new challenges in determining whether metadata, algorithmic outputs, or device logs constitute primary facts or merely supporting evidentiary elements.<sup>16</sup>

Scholars argue that this necessitates doctrinal re-evaluation to ensure the classical framework remains effective in technologically advanced litigation.<sup>17</sup>

The doctrine of *factum probandum* and *factum probans* is deeply embedded in both substantive and procedural criminal law, shaping everything from the definition of offences to the rules governing admissibility and evaluation of evidence. Judicial decisions have consistently affirmed the necessity of distinguishing principal facts from evidentiary facts to preserve fairness, precision, and constitutional integrity in criminal trials. As criminal litigation evolves with digital and forensic complexities, the doctrinal framework continues to serve as a vital analytical guide for judges, lawyers, and scholars.

### 3.6 Doctrinal Impact on Evidentiary Inferences and Judicial Reasoning

The doctrine shapes judicial reasoning by defining the inferential structure through which courts transition from evidence to conviction. Courts must assess whether each *factum probans*

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<sup>14</sup> *Supra* note 8.

<sup>15</sup> 2010 7 SCC 263.

<sup>16</sup> Jayant Varma, “Digital Evidence and the Law of Proof,” 7 *Indian Journal of Law & Technology* 45 (2021).

<sup>17</sup> Aparna Chandra, “Evidentiary Standards in the Age of Technology,” 12 *NUJS Law Review* 211 (2020).

logically contributes to establishing the corresponding *factum probandum*.

In *Hanumant Govind Nargundkar v. State of Madhya Pradesh*<sup>18</sup>, the Court warned against drawing unwarranted inferences from merely suspicious circumstances, noting that evidentiary facts must bear a strict and unequivocal connection to the principal fact.

Modern judicial reasoning increasingly relies on structured inferential models, especially in digital and forensic evidence cases. Journals such as the *Indian Journal of Criminology* and the *NLU Law Review* have highlighted how evidentiary facts, such as metadata or chain of custody records, must be carefully assessed to determine their inferential value.<sup>19</sup> Courts have begun adopting this reasoning, especially after the admissibility framework established in *Anvar P.V. v. P.K. Basheer*.<sup>20</sup>

#### 4. Evidentiary Burdens and Standards of Proof

The evidentiary burdens that operate within criminal adjudication form the structural backbone of the fact-finding process. The doctrines of *factum probandum* (the ultimate fact to be proved) and *factum probans* (the evidentiary facts used to prove it) cannot function coherently unless they are situated within a well-defined framework of burdens and standards of proof. A criminal trial is fundamentally a process of reconstructing the factual occurrence of a crime, and this reconstruction is guided by principles determining who must prove what, to what extent, and under what circumstances. This chapter examines the conceptual foundations and practical applications of the burden of proof, the standard of proof, and the dynamic burden-shifting mechanisms that shape criminal trials in India and other common-law jurisdictions. It also explores how these evidentiary doctrines influence judicial determinations on whether the prosecution has successfully established the factual occurrence of a crime.

##### 4.1 Meaning and Nature of the Burden of Proof

The burden of proof is a foundational concept that governs the allocation of responsibility in establishing facts in issue. It exists in two distinct dimensions:

- (a) the legal (persuasive) burden, and

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<sup>18</sup> *Supra* note 7.

<sup>19</sup> "Digital Evidence and Inferential Reasoning in Criminal Trials," *Indian Journal of Criminology*, Vol. 45 (2021).

<sup>20</sup> 2014 10 SCC 473.

(b) the evidential burden.

The legal burden represents the obligation to prove a fact to the standard mandated by law, whereas the evidential burden requires producing initial evidence sufficient to put a fact in issue for judicial consideration. In criminal law, the legal burden ordinarily lies on the prosecution, reflecting the presumption of innocence and Article 21 protections. However, the evidential burden may shift depending on statutory presumptions or the nature of the defence raised.<sup>21</sup>

#### 4.2 Standard of Proof in Criminal Trials

The traditional criminal standard of proof, beyond reasonable doubt, reflects the moral weight of criminal conviction. Courts have long resisted numerical definitions, preferring qualitative explanations such as “a doubt grounded in reason” or “moral certainty.”<sup>22</sup> This standard applies primarily to the *factum probandum*, such as whether the accused committed the prohibited act with the requisite intent. Intermediate factual issues may, however, be decided on the preponderance of probabilities, especially when arising from statutory defences or reverse-onus clauses.<sup>23</sup>

#### 4.3 Relationship Between Burden of Proof and Factum Probandum

The legal burden aligns directly with the prosecution’s duty to establish the *factum probandum*. To prove the ultimate fact that an offence occurred, the prosecution must rely on *facta probantia*, circumstances such as motive, conduct, forensic linkages, or digital trails. Thus, *factum probandum* defines what must be proved; *factum probans* defines how it is proved. Judicial constructions consistently recognise that unless evidentiary facts cumulatively satisfy the criminal standard, the ultimate fact cannot be deemed established.<sup>24</sup>

#### 4.4 Evidential Burden and the Role of Presumptions

Modern criminal law incorporates several rebuttable statutory presumptions, particularly in narcotics, corruption, dowry-death, and sexual-offence cases, which may shift the evidential

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<sup>21</sup> H. L. Ho, *A Philosophy of Evidence Law* 45 (Oxford University Press 2008).

<sup>22</sup> *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808.

<sup>23</sup> Ratanlal & Dhirajlal, *The Law of Evidence* 153 (LexisNexis 23<sup>rd</sup> edn.,2020).

<sup>24</sup> A. Zuckerman, *The Principles of Criminal Evidence* 67 (Oxford University Press, 1989).

burden onto the accused once foundational facts are proved.<sup>25</sup> These presumptions do not alter the prosecution's substantive legal burden to prove guilt beyond reasonable doubt but modify the procedural pathway to establishing the *factum probandum*. Courts note that the accused's burden under such presumptions is only to establish a defence on the preponderance of probabilities.<sup>26</sup>

#### 4.5 Standards of Proof for the Defence

When the defence raises an exception, such as unsoundness of mind, intoxication, or private defence, the law imposes a lower standard: the defence need only demonstrate a reasonable probability, not certainty.<sup>27</sup> This aligns with the constitutional and jurisprudential principle that the prosecution must ultimately prove every element of guilt. The defence's evidentiary burden exists merely to create reasonable doubt regarding the prosecution's narrative.

#### 4.6 Burden of Proof in Circumstantial Evidence Cases

Where the prosecution relies primarily on circumstantial evidence, courts have articulated stringent parameters:

1. Circumstances must be fully established;
2. They must point unerringly towards guilt;
3. They must exclude every reasonable hypothesis consistent with innocence.<sup>28</sup>

These criteria ensure that even without direct evidence, the standard of proof remains uncompromised.

#### 4.7 Dynamic Nature of Evidentiary Burdens in Multi-Stage Trials

The burden of proof evolves across procedural stages:

- At the charge-framing stage, the prosecution must only demonstrate a *prima facie* case.

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<sup>25</sup> *Noor Aga v. State of Punjab*, (2008) 16 SCC 417.

<sup>26</sup> *State of Rajasthan v. Kashi Ram*, (2006) 12 SCC 254.

<sup>27</sup> *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, AIR 1964 SC 1563.

<sup>28</sup> *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622.

- At the trial stage, the full legal burden applies.
- At the appellate stage, courts assess whether the prosecution discharged its burden adequately and whether the *factum probandum* was properly established.<sup>29</sup>

This dynamic ensures consistency in safeguarding the rights of the accused.

#### 4.8 Evaluating Standards of Proof Amid Contemporary Challenges

Digital and forensic evidence have transformed fact-finding, raising issues of authenticity, reliability, chain of custody, and admissibility. Courts stress that despite technological sophistication; such evidence must still satisfy the criminal standard of proof. Machine-generated data, metadata, and electronic communications require meticulous authentication, and the prosecution must prove their connection to the accused beyond reasonable doubt.<sup>30</sup>

#### 5. Judicial Interpretation: Indian, Common-Law and Comparative Perspectives

Judicial interpretation plays a decisive role in shaping the doctrines of *factum probandum* and *factum probans*. Although these terms are not always explicitly invoked in judicial reasoning, courts across jurisdictions routinely apply the underlying principles while distinguishing between ultimate facts that must be proved (*factum probandum*) and evidentiary facts that support them (*factum probans*). This chapter analyses major judicial approaches in India, common-law jurisdictions, and selected foreign systems to illustrate how courts operationalise evidentiary burdens, standards of proof, and factual inference-making.

Indian courts, particularly the Supreme Court, have emphasised that criminal adjudication hinges on the methodical construction of evidentiary links establishing the factual occurrence of a crime. Common-law courts in the United Kingdom, the United States, and other jurisdictions similarly focus on whether evidentiary facts cumulatively support the prosecution's narrative to the required standard of proof. Comparative jurisprudence helps illuminate how evolving evidentiary landscapes, digital, forensic, technological, reshape judicial approaches to the proof of ultimate facts.

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<sup>29</sup> *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4.

<sup>30</sup> R. K. Bag, *Law of Electronic Evidence* 87 (Cyberlaw Publications, 4<sup>th</sup> edn., 2021).

## 5.1 Indian Judicial Approach to Factum Probandum and Factum Probans

Indian courts have long recognised the implicit distinction between evidentiary facts and the ultimate fact in issue. The Supreme Court's interpretation often reflects a structured method of analysing whether the prosecution has successfully connected *facta probantia* into a coherent chain leading to *factum probandum*.

In *Hanumant Govind Nargundkar v. State of Madhya Pradesh*<sup>31</sup>, the Supreme Court articulated the foundational principle that each evidentiary link must be fully established and must point unerringly toward the accused's guilt, thereby illustrating the relationship between *factum probans* and *factum probandum*. Similarly, in *Sharad Birdhichand Sarda v. State of Maharashtra*<sup>32</sup>, the Court laid down the "five golden principles" governing circumstantial evidence, which effectively structure the evidentiary path from individual facts to the ultimate fact of guilt.

Indian courts have also dealt with the complexity of presumption-based burden shifts. In *State of Rajasthan v. Kashi Ram*<sup>33</sup>, the Supreme Court clarified that statutory presumptions may ease the prosecution's evidential burden but do not dilute its legal burden to prove guilt beyond reasonable doubt.

## 5.2 Common-Law Perspectives: United Kingdom

British jurisprudence offers some of the earliest analyses of ultimate facts and supporting evidentiary facts. In *Woolmington v. Director of Public Prosecutions*<sup>34</sup>, the House of Lords established the celebrated "golden thread" principle that the prosecution must prove guilt, while the accused bears only a limited evidential burden for certain defences. This reinforces the doctrinal distinction between the ultimate fact to be proved and the evidentiary facts introduced by both sides.

In cases such as *R v. Exall*<sup>35</sup>, the English courts emphasised that circumstantial evidence must form a complete and unbroken chain leading to the *factum probandum* of guilt.

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<sup>31</sup> *Supra* note 7.

<sup>32</sup> *Supra* note 8.

<sup>33</sup> AIR 2007 SC 144.

<sup>34</sup> 1935 AC 462 (HL).

<sup>35</sup> 1866 4 F & F 922.

### 5.3 United States: The Reasonable Doubt Doctrine and Evidentiary Facts

The U.S. Supreme Court explicitly recognises the separation between evidentiary facts and ultimate facts. In *re Winship*<sup>36</sup>, the Court held that the Due Process Clause requires the prosecution to prove every element of the offence beyond a reasonable doubt. This corresponds directly to the burden of proving the *factum probandum*.

In *Jackson v. Virginia*<sup>37</sup>, the Court established that an appellate court must examine whether any rational fact-finder could have found the essential elements of the crime proven beyond reasonable doubt based on the evidentiary record. This principle demonstrates how *factum probans* (testimony, forensic evidence, circumstantial links) is evaluated against the ultimate fact of guilt.

### 5.4 Comparative Civil-Law Insights: Presumptions and Factual Reconstruction

Civil-law jurisdictions, though procedurally distinct, also employ frameworks similar to the *factum probandum/factum probans* distinction. For instance, French criminal courts emphasise *intime conviction*, requiring judges to articulate how individual evidentiary items support the final conclusion of guilt. German courts similarly adopt a structured evidentiary assessment, requiring that evidentiary facts meet strict reliability checks before contributing to the ultimate factual finding.

These systems show that the distinction between evidentiary and ultimate facts is a universal facet of criminal adjudication.

### 5.5 Judicial Attitudes Toward Digital and Forensic Evidence Across Jurisdictions

Courts worldwide have increasingly been called upon to adjudicate cases where digital and forensic evidence plays a central role.

In India, *Anvar P.V. v. P.K. Basheer*<sup>38</sup> revolutionised digital evidence law, holding that electronic records must meet strict statutory requirements for admissibility before they can serve as *facta probantia*. Later, *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*<sup>39</sup>

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<sup>36</sup> 1970 397 U.S. 358.

<sup>37</sup> 1979 443 U.S. 307.

<sup>38</sup> *Supra* note 20.

<sup>39</sup> AIR 2020 SC 4908.

reaffirmed that Section 65B certification is mandatory, reinforcing the need for reliability of evidentiary facts before they may contribute to the *factum probandum*.

In the UK, *R v. Rowe*<sup>40</sup> and *R v. Edwards*<sup>41</sup> addressed the admissibility and authentication of electronic communications, demonstrating increasing judicial scrutiny of digital *facta probantia*.

U.S. courts, such as in *Riley v. California*<sup>42</sup>, have emphasised privacy, search protocols, and evidentiary integrity when dealing with digital information.

### 5.6 How Courts Construct the Evidentiary Narrative

Across jurisdictions, judicial decisions reveal a common methodology:

1. Identifying the *factum probandum* (ultimate fact in issue).
2. Evaluating the credibility, reliability, and relevance of *facta probantia*.
3. Determining whether the evidentiary mosaic satisfies the legal burden of proof.
4. Ensuring that presumptions, where applied, do not compromise constitutional fairness.

This interpretive process underscores the judiciary's crucial role in shaping evidentiary doctrine.

## 6. Challenges in Modern Criminal Litigation (Digital, Forensic, Circumstantial Evidence)

The contemporary landscape of criminal adjudication has undergone a rapid evidentiary transformation, particularly with the entry of digital technologies, advanced forensic science, and complex circumstantial chains. These developments directly affect the operation of *factum probandum* and *factum probans*, because courts increasingly depend on technical forms of evidence to infer the factual occurrence of the crime. Yet, despite their promise, these evidentiary modalities raise concerns relating to authenticity, reliability, admissibility, investigator competence, and the risk of over-reliance on scientific or digital indicators. This

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<sup>40</sup> 2005 EWCA Crim 1418.

<sup>41</sup> 1991 1 WLR 207.

<sup>42</sup> 2014 573 U.S. 373.

chapter examines these challenges within the broader framework of evidentiary burdens and standards of proof.

### 6.1 Digital Evidence: Authenticity, Integrity, and Chain of Custody

Digital evidence, CCTV footage, metadata, call-detail records (CDRs), server logs, emails, social-media communications, has transformed fact-finding, but it presents unique vulnerabilities.

First, digital information is inherently fragile, easily modified, and highly dependent on proper seizure and forensic protocols. Courts have insisted that the prosecution must establish integrity, not merely existence, of the electronic record. The Indian Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*<sup>43</sup> held that electronic evidence is inadmissible unless accompanied by a valid section 65B(4) certificate under the Evidence Act, emphasising that digital evidence must be authenticated to serve as reliable *factum probans*.

Second, chain of custody failures, improper imaging of devices, delayed sealing, or absence of forensic hash values, can collapse the evidentiary significance of digital materials. Internationally, similar concerns have been noted by scholars such as Stephen Mason, who argues that courts must remain conscious of the technical opacity of digital systems.<sup>44</sup>

### 6.2 Forensic Evidence: Scientific Validity and Over-Reliance

Forensic science is often perceived as objective, yet many techniques (e.g., bite-mark analysis, voice spectrography, gait analysis) have been challenged for lacking scientific validity. The Indian courts have repeatedly warned against uncritical judicial dependence.

In *State of Haryana v. Bhagirath*<sup>45</sup>, the Supreme Court stressed that medical opinion is advisory and cannot override direct or reliable circumstantial evidence. DNA evidence, while highly persuasive, also requires rigorous laboratory protocols and accreditation. In *Krishan Kumar Malik v. State of Haryana*<sup>46</sup>, the Court upheld the reliability of DNA profiling but reiterated

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<sup>43</sup> *Supra* note 39.

<sup>44</sup> Stephen Mason & Daniel Seng, *Electronic Evidence* (Institute of Advanced Legal Studies, London, 5th edn., 2017).

<sup>45</sup> 1999 5 SCC 96.

<sup>46</sup> 2011 7 SCC 130.

that proper sampling and testing procedures are essential.

Comparative jurisprudence also reflects concerns. The U.S. National Academy of Sciences (NAS) Report (2009) warned against the overstated certainty of many forensic techniques, urging heightened scrutiny before accepting them as conclusive.<sup>47</sup>

### **6.3 Circumstantial Evidence: Strengthening the Inferential Chain**

Circumstantial evidence remains central to criminal adjudication where direct proof is absent. Courts have developed a strict doctrine requiring that:

1. every link in the chain must be firmly established,
2. the circumstances must be consistent only with guilt, and
3. they must exclude every reasonable alternative hypothesis.

This doctrine, reiterated in *Sharad Birdhichand Sarda v. State of Maharashtra*<sup>48</sup>, forms the constitutional spine of inferential reasoning in criminal trials.

However, modern cases involve increasingly complex chains: digital footprints mixed with behavioural patterns, financial trails, or algorithmic traces. Courts often face difficulty distinguishing between probabilistic correlations and legally sufficient causal inferences.

### **6.4 Machine-Generated Evidence and Technological Uncertainty**

Machine-generated evidence, including automated logs, GPS data, biometric matches, video analytics, facial recognition databases, raises difficult questions:

- Can machines be presumed accurate?
- What level of human oversight is required?
- How should algorithmic bias or false positives be evaluated?

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<sup>47</sup> National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (National Academies Press, Washington, 2009).

<sup>48</sup> *Supra* note 8.

The Delhi High Court in *Kansraj v. State of NCT of Delhi*<sup>49</sup> observed that algorithmic facial-recognition matches cannot substitute for independent corroboration. International research confirms similar concerns. Scholars like Karen Yeung warn that algorithmic systems may embed systemic biases and must not be treated as infallible fact-generating instruments.<sup>50</sup>

### 6.5 Investigative Lapses and Technical Incompetence

A recurring challenge in Indian criminal litigation is inadequate investigative capacity. Failures include:

- insufficient digital forensics training,
- improper evidence packaging,
- non-observance of cyber-crime protocols,
- misuse of commercially available extraction tools without validation.

The Court in *Manu Sharma v. State of NCT of Delhi*<sup>51</sup> highlighted how sloppy forensic handling undermined the prosecution's case, demonstrating that evidentiary value is inseparable from investigative rigour.

## 7. Reforms And Recommendations

The analysis undertaken across the preceding chapters reveals that the evidentiary relationship between *factum probandum* and *factum probans* continues to face substantive and procedural pressures in modern criminal adjudication. These pressures arise from doctrinal ambiguities, technological shifts, inconsistent judicial interpretation, and institutional constraints in criminal justice administration. To strengthen the legitimacy, accuracy, and fairness of the fact-finding process, a multi-layered reform strategy, doctrinal, procedural, technological, and institutional, is necessary. This chapter outlines key directions for reform.

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<sup>49</sup> 2021 SCC Online Del 3231.

<sup>50</sup> Karen Yeung, "Algorithmic Regulation: A Critical Interrogation," *Oxford Internet Institute Working Paper* (2018).

<sup>51</sup> 2010 6 SCC 1.

### 7.1 Strengthening Evidentiary Rules for Digital and Forensic Evidence

Digital and forensic evidence present reliability and authenticity concerns, often leading to wrongful admission or wrongful exclusion.

Reform Recommendation:

- Amend the BSA to create more robust, mandatory procedures for chain of custody, hash verification, and metadata authentication.
- Establish independent forensic audit units to verify digital evidence before trial.
- Introduce statutorily prescribed reliability thresholds for scientific techniques (DNA, narcotics profiling, ballistic matching).

### 7.2 Institutional Reforms for Forensic and Investigative Capacity

The factual foundation (*factum probans*) is only as strong as the investigative mechanisms that generate it. Currently, forensic laboratories are understaffed, underfunded, and overburdened.

Reform Recommendation:

- Expand and decentralize forensic laboratories, ensuring each state has adequate functional units.
- Make forensic training mandatory for investigating officers, especially in digital forensics and scientific sampling procedures.
- Introduce timelines for forensic report submission to avoid delays that compromise evidentiary value.

### 7.3 Reforming Presumptions and Reverse Burdens

Statutory presumptions, especially in NDPS, POCSO, Dowry Death, and Corruption cases, shift evidential burdens onto the accused, sometimes too heavily.

Reform Recommendation:

- Rationalize reverse-burden provisions by introducing clearer thresholds for when the

presumption is triggered.

- Require the prosecution to establish a minimal evidentiary foundation before any presumption operates.
- Establish appellate guidelines to evaluate whether presumptions were correctly applied.

#### **7.4 Enhancing Trial Court Reasoning on Fact-Finding**

Trial judgments often fail to explicitly connect evidentiary facts to ultimate facts, leading to weak or inconsistent reasoning.

Reform Recommendation:

- Mandate structured judgment formats requiring courts to separately analyse:
  - the identified *factum probandum*,
  - the corresponding *facta probantia*,
  - the judicial reasoning connecting the two.
- Judicial academies should conduct targeted training on reasoning and fact-finding methodology.

#### **7.5 Introducing Technological Tools to Support Evidence Assessment**

Technological assistance can help courts and investigators evaluate complex evidence.

Reform Recommendation:

- Implement AI-driven tools for forensic triaging, document comparison, and metadata extraction (with strict human oversight).
- Create secure digital evidence management systems to store, track, and verify electronic evidence throughout proceedings.

#### **7.6 Strengthening Legal Aid and Defence Capabilities**

The defence side often lacks adequate resources to challenge the prosecution's *facta probantia*,

undermining adversarial balance.

Reform Recommendation:

- Expand state-funded forensic and technological support for defence counsel.
- Improve training for legal aid lawyers in evidentiary analysis, forensics, and digital evidence.

### **7.7 Embedding Safeguards Against Wrongful Convictions**

The cumulative effect of evidentiary weaknesses can lead to miscarriages of justice.

Reform Recommendation:

- Establish innocence review commissions at the state level.
- Provide statutory rights to post-conviction forensic testing.
- Develop guidelines on mitigating the risk of misused or unreliable scientific evidence.

## **8. Conclusion**

The relationship between *factum probandum* and *factum probans* lies at the heart of criminal adjudication, shaping not only the evidentiary landscape but also the philosophical foundations of proof. This research has shown that the distinction between the ultimate fact to be proved and the evidentiary facts supporting it is not merely theoretical; it deeply influences the allocation of burdens, the application of standards of proof, and the judicial evaluation of evidentiary sufficiency. Historically rooted in common-law traditions and refined through centuries of jurisprudence, these doctrines continue to serve as indispensable tools for structuring judicial reasoning.

Across Indian criminal procedure and comparative jurisdictions, courts have consistently emphasised that the prosecution bears the responsibility to prove the *factum probandum*, such as the occurrence of a crime and the accused's involvement, beyond reasonable doubt. *Factum probans*, in turn, stems from diverse evidentiary sources: oral testimony, documentary material, forensic traces, digital footprints, and circumstantial linkages. The harmony between these two

categories of facts forms the evidentiary narrative that determines guilt or innocence. The chapters preceding this conclusion have highlighted how this narrative is shaped by statutory presumptions, defence burdens, evolving standards for scientific evidence, and judicially-developed principles governing circumstantial proof.

At the same time, modern criminal litigation presents new complexities. Digital evidence creates uncertainties regarding authenticity and integrity. Forensics, while powerful, can produce ambiguous or probabilistic results. Circumstantial evidence, though capable of supporting conviction, demands strict adherence to judicially crafted safeguards to prevent wrongful inference. These challenges reveal persistent doctrinal and practical gaps, especially in maintaining consistency in evidentiary thresholds and ensuring that technological evidence meets the traditional standard of proof.

The study underscores the need for calibrated reforms: clearer statutory guidance on evidentiary burdens in digital and scientific contexts, enhanced forensic standards, judicial training for evaluating technologically complex evidence, and stronger safeguards against unwarranted reliance on presumptions. Strengthening these areas will not only fortify the coherence of *factum probandum* and *factum probans* within criminal trials but will also protect the constitutional values of fairness, presumption of innocence, and the right against wrongful conviction.

Ultimately, the effectiveness of criminal justice depends on the precise and principled application of evidentiary doctrines. As the nature of crime and evidence evolves, so too must the frameworks through which courts interpret, scrutinise, and reconcile the facts presented before them. The path forward lies in reaffirming the foundational principles of proof while adapting them thoughtfully to contemporary realities, ensuring that the pursuit of truth remains disciplined, rational, and consistent with the demands of justice.

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